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No. 01-1373

Supreme Court, U.S.
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In the Supreme Court of the United States

MOLONEY COACHBUILDERS, INC.,
Petitioner,

v.

INTERNATIONAL ARMOR AND LIMOUSINE, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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3 pp

Respondents' Brief in Opposition erroneously characterizes the parties' contract dispute in the District Court as "involving the *ownership* of trademark rights . . .." (Opposition at 1, emphasis added). In fact, Moloney's breach of contract claim did not raise a dispute over "ownership" of the Moloney trademark. There never was any dispute that Moloney owned the Moloney name and mark. The only dispute raised by the contract claim was whether Respondent's *use* of the Moloney mark was permitted by, or violated, the Settlement Agreement. (*Compare* Complaint for Declaratory Judgment at ¶¶ 14, 15 *with* Counterclaim and Third Party Counterclaim at ¶ 33).

Moloney did not know when it filed its counterclaim how this case would turn out. It believed that Respondents were infringing its trademark and committing other Lanham Act violations *and* that Respondent Earle Moloney was breaching the Settlement Agreement. Moloney sued in federal court, as Congress said it could. Had Judge Nordberg denied Moloney's Motion for Judgment on the Pleadings on Count I, finding, for example, that the Settlement Agreement did not preclude Earle Moloney from using the phrase, "A Moloney Owned Entity," Moloney still had the congressionally given right to argue and prove in federal court that the Lanham Act precluded that use. Indeed, even having won on its contract claim against Respondent Earle Moloney, Moloney still should have been permitted to pursue its Lanham Act claims against the other Respondents, and even to pursue against Earle Moloney Lanham Act remedies provided by Congress which are not available under Illinois contract law.[1]

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[1] Treble damages are available under the Lanham Act, but are not available under Illinois law for breach of contract.

By characterizing this case as a dispute over "ownership," Respondents erroneously suggest (as did the Seventh Circuit) that the parties' dispute boils down to a discrete issue of title, which is resolvable as a matter of state contract law alone. But this case is really about use of a trademark. And the challenged use gives rise to both breach of contract under state law and trademark infringement and other Lanham Act violations under federal law.

April 26, 2002

Respectfully submitted,

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(*Compare* 15 U.S.C. §1117(a) *with Cirrincione v. Johnson*, 184 Ill.2d 109, 703 N.E.2d 67 (1998)).